



Health & Human Services Commission

Texas Administrative Code

Title 1 TAC

Part XV

Chapter 391. Purchase of Goods and Services by Health and Human Services Agencies

Effective Date—December 18, 2000

Subchapter A. General

§ 391.1. Purpose.

This chapter supplies general procedures and criteria to govern the purchase of goods and services by a purchasing entity that are efficient, economical and achieve health and human services procurement objectives.

§ 391.2. Scope.

(a) This chapter applies to the purchase of goods and services by a purchasing entity, whether for administrative or client use or benefit. The provisions of this chapter and corresponding rules of a purchasing entity govern to the extent of any conflict with a procedure or requirement prescribed by another state agency other than:

- (1) a procedure or requirement relating to historically underutilized businesses; and
- (2) a procedure or requirement relating to the purchase of goods or services from persons with disabilities.

(b) This chapter does not apply to the following transactions:

- (1) The lease, purchase, or lease-purchase of real property;
- (2) The award of grants; or
- (3) Interstate or international agreements executed in accordance with applicable law.

§ 391.3. Authority.

This chapter is adopted under the authority granted the Health and Human Services Commission in § 531.033, Government Code, and § 2155.144, Government Code (as added by the Act of May 29, 1997, S.B. 1066, § 1, 75th Leg., R.S.).

§ 391.21. Health and human services procurement objectives.

The procedures and requirements of this chapter are established to accomplish the following objectives:

- (1) Achieve the best value for the taxpayers;
- (2) Serve the needs of internal customers while minimizing administrative burdens and avoidable delays in delivery or performance;
- (3) Promote fairness and competition for government contracts;
- (4) Support the delivery of services and benefits that best meets the needs of clients of programs administered by health and human services agencies;
- (5) Generate economies of scale through group, coordinated, and other combined purchasing arrangements;
- (6) Promote timely, high quality, and responsive performance by contractors;
- (7) Encourage flexible procurement and business relationships, including the use of proven governmental and commercial practices that streamline the procurement process and emphasize results rather than process;
- (8) Encourage and reward the continuing participation of quality contractors and suppliers; and
- (9) Support agency strategic planning and initiatives.

§ 391.22. Commitment to fair and open competition.

The procedures prescribed by this chapter and the rules and policies adopted and implemented by purchasing entities must, to the greatest extent practicable, promote fair and open competition for purchase awards and contracts.

§ 391.31. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) "Applicant" means a person or organization that applies for a contract or grant from a purchasing entity.
- (2) "Best value" means the optimum combination of economy and quality that is the result of fair, efficient, and practical procurement decision-making and which achieves health and human services procurement objectives.
- (3) "Commission" means the Health and Human Services Commission.
- (4) "Competition" means a contract or purchasing action in which two or more qualified or responsible vendors, acting independently, may be solicited to supply goods or services on acceptable terms and under a procedure that

allows the contemporaneous and comparative evaluation of bids, proposals, offers, quotes, or other suitable expressions of interest by a vendor.

- (5) "Contract" means a written agreement to purchase goods and/or services between a purchasing entity and a vendor or supplier.
- (6) "Contractor" means an individual, firm, or entity that contracts with a health and human services agency to provide goods and/or services.
- (7) "Disproportionate share hospital" means a public or private hospital that participates in the Texas Medical Assistance (Medicaid) program and is eligible for additional reimbursement from the disproportionate share hospital fund because it meets the conditions of participation and serves a disproportionate share of low-income patients.
- (8) "Enrollment" means the contracting, on a competitive or noncompetitive basis, of vendors or suppliers that meet qualifications or criteria for participation specified by the purchasing entity and agree to provide the contracted goods and/or services in accordance with terms and conditions specified by the purchasing entity.
- (9) "Factors other than price and meeting specifications" means evaluation criteria used by a health and human services agency that are in addition to the price of the good or service or specification requirements.
- (10) "Goods" means products, merchandise, equipment, supplies, or commodities acquired for consumption, use, or distribution by a health and human services agency other than:
 - (A) goods within the definition of "automated information system" under chapter 2157, Government Code; or
 - (B) goods obtained under the Interagency Cooperation Act, chapter 772, Government Code, or Interlocal Cooperation Act, chapter 791, Government Code;
 - (C) goods used in support of the agency's health care programs and acquired under § 2155.144, Government Code (as added by Acts 1997, 75th Leg., ch. 165, § 17.01).
- (11) "Grant" means an award of assistance in the form of money, property in lieu of money, or other assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations, and guidance provided by the grantor agency.
- (12) "Health and human services agency" means a state agency identified in § 531.001(4), Government Code.
- (13) "Preferred supplier" means a provider of goods or services to whom a health and human services agency is required by state or federal law to provide a preference in the procurement of goods or services (e.g., Texas

Department of Criminal Justice Prison Industries products, Texas Industries for the Blind and Handicapped).

- (14) "Procurement method" means the business procedure employed by a health and human services agency to acquire goods and services in accordance with this chapter that may include an outright purchase, license, lease-purchase, lease, rental, cost reimbursement, fee-for-service or other method approved by the commission or authorized by law.
- (15) "Public hospital" means a hospital owned, leased, or operated by a governmental entity of the state of Texas.
- (16) "Purchasing entity" means:
 - (A) a health and human services agency;
 - (B) a state agency (other than a health and human services agency), or local unit of government that expends funds received from the Texas Department of Health for the acquisition of goods and services;
 - (C) a public hospital that is designated a disproportionate share hospital under the State of Texas Title XIX Medical Assistance program (Medicaid); and
 - (D) a state agency (other than a health and human services agency) that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health or mental retardation services.
- (17) "Respondent" means a person or entity that submits an oral, written, or electronic response to a solicitation instrument. For purposes of this chapter, "respondent" is intended to include such phrases as "bidder," "offeror," "proposer," or other similar terminology employed by the purchasing entity to describe the person or entity that responds to a solicitation instrument.
- (18) "Services" means the furnishing of skilled or unskilled labor or professional work, but does not include:
 - (A) a professional service subject to Subchapter A, Chapter 2254, Government Code, or § 12.0121, Health & Safety Code;
 - (B) a service of a state agency employee;
 - (C) a consulting service or service of a consultant as defined by Subchapter B, Chapter 2254, Government Code;
 - (D) a service of a public utility;
 - (E) a service within the definition of "automated information system" under chapter 2157, Government Code;

(F) a service used in support of the agency's health care programs and acquired under § 2155.144, Government Code (as added by Acts 1997, 75th Leg., ch. 165, § 17.01); or

(G) a service obtained under the Interagency Cooperation Act, chapter 771, Government Code.

(19) "Solicitation instrument" means a written or electronic notification of a purchasing entity's intent to purchase goods or services.

(20) "Specifications" means the written statement or description and enumeration of particulars of goods to be purchased or services to be performed.

(21) "Supplier" means an individual or business entity that supplies goods or services to a purchasing entity under an agreement or contract to provide such goods or services.

(22) "Vendor" means an individual or business entity that is organized for the purpose of offering goods or services for sale, lease, lease-purchase, or contract.

§ 391.35. Compliance with federal requirements.

If a federal law or regulation imposes different requirements than this chapter as a condition of the receipt of federal funds, the purchasing entity will follow the federal requirements to the extent of any conflict with this chapter.

§ 391.36. Compliance with state requirements.

(a) This section applies to the purchase of the following:

(1) an "automated information system" as defined by Chapter 2157, Government Code;

(2) "professional services" as defined by Chapter 2254, Government Code or §12.0121, Health and Safety Code;

(3) a "consulting service" as defined in chapter 2254, Government Code; or

(4) the award of a grant.

(b) A health and human services agency that proposes to purchase an item specified in subsection (a) of this section must comply with all applicable procedures and requirements of the statutes identified in subsection (a). A health and human services agency may employ the procedures prescribed by this chapter when acquiring an item specified in subsection (a) to the extent the provisions of this chapter are not in conflict with the statutory provisions identified in subsection (a).

Subchapter B. Responsibilities of the Health & Human Services Commission.

§ 391.51. Coordination of procurement practices.

The commission is generally responsible for coordinating the procurement practices of health and human services agencies in a manner that ensures best value for the agency through the use of efficient procurement practices.

§ 391.53. Approval of purchasing methods by the Health and Human Services Commission.

- (a) Applicability. This section applies to the following purchasing entities:
 - (1) a health and human services agency other than the Health and Human Services Commission;
 - (2) a public hospital that is designated a disproportionate share hospital under the State of Texas Title XIX Medical Assistance program (Medicaid);
 - (3) a state agency, other than a health and human services agency, or local unit of government that expends funds received from the Texas Department of Health for the acquisition of goods and services; and
 - (4) a state agency, other than a health and human services agency, that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health or mental retardation services.
- (b) Commission approval. A purchasing entity to which this section applies must obtain the approval of the commission prior to implementation of purchasing methods that comply with the general standards and procedures prescribed by this chapter. The purchasing entity must provide the commission sufficient information to ascertain the procurement methods of the entity, including copies of applicable rules, policies, and procedures developed by the entity.

§ 391.55. Review of certain best value factors.

- (a) General purposes. This section implements the following provisions of Texas law:
 - (1) Section 2155.144(e), Government Code;
 - (2) Section 12.055(d), Health and Safety Code; and
 - (3) Section 533.016(d), Health and Safety Code.
- (b) Affected purchasing entities. This section applies only to a purchasing entity that is an administrative agency of the State of Texas.
- (c) Scope.

- (1) This section applies to a health and human services agency's purchase of goods or services if the proposed purchase:
 - (A) exceeds \$100,000 in value; and
 - (B) is to be awarded on the basis of consideration of factors other than price and meeting specifications.
- (2) This section does not apply to proposed purchases of goods or services that will not involve consideration of factors other than price and meeting specifications.
- (d) Commission review of certain best value factors. A health and human services agency may not conduct a purchase of goods or services after December 31, 2000, unless the commission has first reviewed and approved the factors other than price and meeting specifications that the agency proposes to use in making the purchase.
- (e) Use of best value factors. A health and human services agency may employ any factor or combination of factors listed in § 391.121 of this chapter or any other approved by the commission without first obtaining the commission's approval for the use of such factors in a particular purchase or type of purchase.
- (f) Approval of best value factors. The commission may approve the factors to be utilized by a health and human services agency to make a purchase subject to this section on a periodic basis or on request by a health and human services agency. The commission will maintain an index of approved best value factors. The commission will update the index as needed to reflect additions or deletions of best value factors.

§ 391.57. Transfer of purchasing authority.

- (a) The commission may transfer the purchasing authority of a health and human services agency if the commission determines such transfer is advantageous to the state.
- (b) The commission may transfer an agency's purchasing authority to the commission or another health and human services agency that agrees to assume purchasing responsibility for the agency.

Subchapter C. Responsibilities of health and human services agencies.

§ 391.71. Adoption of rules.

- (a) A health and human services agency may adopt rules to implement the requirements of this chapter.
- (b) A health and human services agency may determine whether current rules of the agency satisfy the requirements of this chapter. If the agency determines that

current rules comply with the requirements of this chapter, it shall document that finding in a manner readily accessible to the public.

Subchapter D. Purchase of goods and services.

§ 391.101. Competitive procurement methods.

A purchasing entity must, except as provided in this chapter, employ a competitive procurement method as the primary method of purchasing goods or services. Approved competitive procurement methods include the following:

- (1) Competitive sealed bidding as provided in § 391.141 of this chapter;
- (2) Competitive proposals or negotiation as provided in § 391.151 of this chapter.

§ 391.103. Noncompetitive procurements.

A purchasing entity may acquire goods or services on a non-competitive basis as authorized in subchapter A, of this chapter under any of the following circumstances:

- (1) The purchasing entity enlists or enrolls vendors, suppliers, or service providers under a method that is open to all such vendors, suppliers, or service providers who meet qualification criteria established by the purchasing entity as provided in § 391.183 of this chapter;
- (2) The purchase is required by state and/or federal law to be awarded on a non-competitive basis;
- (3) The purchase may be conducted as a noncompetitive negotiation as specified in § 391.161 of this chapter;
- (4) The purchase is subject to an exception to competitive purchasing requirements as specified in § 391.109 of this chapter; or
- (5) The purchase is for an amount not more than \$5000 or a lesser sum established by the purchasing entity.

§ 391.105. Alternative purchasing methods.

A purchasing entity may purchase goods and services in accordance with an alternative purchasing method authorized under this chapter and conducted in accordance with the standards and requirements described in §§ 391.165, 391.171, and 391.183 of this chapter.

§ 391.107. Cooperative purchasing methods.

A purchasing entity may purchase goods or services in accordance with a cooperative purchasing method authorized by subchapter E of this chapter.

§ 391.109. Exceptions to competitive procurement methods.

A purchasing entity must employ a competitive purchasing method authorized under § 391.101 of this chapter to purchase goods or services unless the purchase consists of one of the following transactions:

- (1) Noncompetitive procurements—the purchase is conducted as a noncompetitive procurement under § 391.103 of this chapter;
- (2) Sole source or proprietary purchases—goods or services that are proprietary to a single vendor or supplier or that may be provided only by a single vendor or supplier. Examples of such purchases include, but are not limited to, the following:
 - (A) Artistic or public speaking services that are unique to a specific individual, group of individuals, or performing group;
 - (B) Membership dues paid in accordance with the General Appropriations Act or other governing law;
 - (C) Continuing education or training; or
 - (D) Extensions of service contracts required to allow completion of previously contracted services, where the delay in completion of the contract is due to circumstances beyond the control of the contractor such as an unforeseen change in applicable state or federal law or a discretionary decision by the purchasing entity to delay a contracted service;
- (3) Emergency purchases—a purchase of goods or services required as a direct result of a bona fide emergency that constitutes an immediate threat to public health or safety or which creates an imminent risk of loss to the purchasing entity that the entity documents and justifies in the procurement record. Despite the existence of a bona fide emergency, a purchasing entity must use its best efforts to conduct the procurement with as much competition as is practical under the circumstances;
- (4) Preferred suppliers—a purchase of goods or services from a preferred supplier when such a purchase is authorized or required by state or federal law;
- (5) Intergovernmental transfers—the transfer, sale, or exchange of goods or services between two or more purchasing entities that are state agencies or local governmental entities (including, but not limited to, local health departments, units, and districts and local mental health or local mental retardation authorities) which are authorized to purchase goods or services under this chapter, provided such transactions are accomplished in accordance with applicable state law;

- (6) Regulated utilities—goods or services provided by a regulated public utility;
- (7) Regulated public communications—goods or services provided by a regulated communications carrier to the extent such purchases are required to be conducted under specific procedures provided by other state or federal law;
- (8) Consulting services—services whose acquisitions are governed by the terms of chapter 2254, subchapter B, Government Code. A purchasing entity may in its discretion employ a competitive purchasing method authorized under this chapter for purchases of consulting services;
- (9) Professional services—services whose acquisition is governed by the terms of chapter 2254, subchapter A, Government Code, or §12.0121, Health and Safety Code;
- (10) "No fault" contract extensions—an extension of a contract required to complete previously contracted services or deliverables, where completion of the contract is delayed or rendered impractical or unduly burdensome through the fault of neither the purchasing entity nor the contractor;
- (11) Contract renewals—a renewal of a contract with the same contractor, provided the original contract and/or solicitation instrument (if incorporated into the contract) allowed for such renewal;
- (12) Gift or grant-restricted use—funding that is accompanied by written instructions from a public or private grantor, donor, or other funding source which require the purchasing entity to contract with a specific entity, in a specific manner, or within a specific time frame;
- (13) Waiver process—a purchase of goods and services under exigent circumstances for items less than \$100,000. Each agency shall provide by rule the criteria for the waiver process;
- (14) Court order—a court has signed an order specifying either the manner of purchase, the time period in which something must be purchased, or the entity from whom the purchase must be made; and
- (15) No/single qualified response—a competitive solicitation was attempted and either no qualified response or only one qualified response was received.

§ 391.121. Best value factors.

A health and human services agency must purchase goods and services on the basis of best value to the state and the agency. A health and human services agency may consider the following factors in determining best value:

- (1) Any installation costs;

- (2) The delivery terms;
- (3) The quality and reliability of the vendor's goods or services;
- (4) The extent to which the goods or services meet the agency's needs;
- (5) Indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;
- (6) The impact on the ability of the agency to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;
- (7) The total long-term cost to the agency of acquiring the vendor's goods or services;
- (8) The cost of any employee training associated with the acquisition;
- (9) The effect of an acquisition on agency productivity;
- (10) The acquisition price;
- (11) The extent to which the goods or services meet the needs of the client(s) for whom the goods or services are being purchased; and
- (12) Any other factor relevant to determining the best value for the agency in the context of a particular acquisition that is sufficiently described in a solicitation instrument.

§ 391.131. Selection and publication of best value criteria.

- (a) In any procurement conducted under the requirements of this chapter, a purchasing entity must identify the specific factors to be analyzed in determining best value. The selection of best value criteria must be tailored to the specific needs of the entity in making the procurement and must not unnecessarily limit competition or discourage the achievement of health and human services procurement objectives.
- (b) Every procurement of goods or services conducted in accordance with the requirements of this chapter must include consideration of price as a factor unless the purchasing entity documents the reasons for disregarding price and, for a procurement that is estimated to exceed \$100,000 in value, obtains the approval of the commission in accordance with § 391.55 of this chapter prior to award of the contract.
- (c) A purchasing entity must publish notice of the specific criteria to be employed by the agency in determining best value. The notice may be published in the

solicitation instrument, public notice, or public announcement of a proposed procurement of goods or services.

§ 391.141. Competitive bidding standards.

(a) Elements. Competitive bidding is a procurement method that consists of the following essential elements:

- (1) Preparation of a solicitation instrument that:
 - (A) clearly, accurately, and completely describes the purchasing entity's requirements;
 - (B) includes all information or documents required to enable a potential respondent to respond (whether attached to the invitation or incorporated by reference) or refers a potential respondent to such information;
 - (C) ensures, to the greatest extent practicable, a level playing field for all prospective respondents; and
 - (D) does not unduly restrict competition for the award;
- (2) Solicitation of bids through public means that allows potential respondents sufficient time, consistent with the needs of the purchasing entity (including client needs), in which to develop and submit a responsive bid. In determining the appropriate amount of time, a purchasing entity may consider:
 - (A) the complexity of the desired goods or services;
 - (B) contract monitoring requirements and other demands on the purchasing entity's resources;
 - (C) the purchasing entity's use of presolicitation notices to reduce the amount of time required to respond; and
 - (D) the geographic distribution of potential respondents.
- (3) Submission of bids (whether sealed or unsealed) for evaluation by the purchasing entity under terms specified by the purchasing entity;
- (4) Evaluation of bids by the purchasing entity; and
- (5) Award of a contract without negotiation to the responsible respondent whose bid:
 - (A) satisfies the requirements of the invitation;
 - (B) offers the best value; and

- (C) best achieves health and human services procurement objectives.
- (b) Selection of competitive bidding. A purchasing entity may purchase goods or services through competitive bidding if it determines:
- (1) There is an adequate amount of time for the solicitation, submission, and evaluation of competitive bids;
 - (2) The purchasing entity has a reasonable expectation of competition for the procurement;
 - (3) The purchasing entity may award a contract primarily on the basis of cost or cost-related factors (whether or not the purchasing entity may consider other best value factors); and
 - (4) The purchasing entity may award a contract on the basis of evaluation of submitted bids without need to discuss or negotiate the specific contents of the bid.
- (c) Bid samples. A purchasing entity may require potential vendors to provide samples for evaluation, testing, demonstration, or inspection as part of a competitive bid.
- (d) Electronic, telephonic or facsimile bids. A purchasing entity may authorize a potential vendor to submit an electronic, telephonic or facsimile bid if it extends that option to all potential respondents for the purchase.
- (e) Withdrawal or modification of bids. A purchasing entity may authorize a respondent to modify or withdraw a bid prior to bid opening under terms and procedures specified by the purchasing entity.
- (f) Minor irregularities in a bid. A purchasing entity may waive a minor irregularity or permit a respondent to correct a minor irregularity in a bid if the irregularity:
- (1) is purely a matter of form rather than substance, such as:
 - (A) the respondent's submission of fewer than the required number of copies of the bids; or
 - (B) the omission of a form or other information that does not prevent evaluation of the bid; and
 - (2) does not affect price, quality, or delivery of the desired goods or services.
- (g) Bid mistakes. If a bid received by a purchasing entity contains a genuine mistake, the purchasing entity may either:
- (1) permit the respondent to correct the mistake prior to award of a contract, provided:
 - (A) the mistake is self-evident or obvious to the purchasing entity;

- (B) the purchasing entity's interests are not compromised by the correction;
 - (C) the purchasing entity determines that the bid, as submitted, is otherwise responsive to the solicitation; and
 - (D) all other bids containing a genuine mistake are treated in identical fashion; or
- (2) reject the bid as nonresponsive.
- (h) Tie bids. If a purchasing entity receives two or more low dollar bids that are equivalent in all other respects, the purchasing entity may award the contract under a method selected by the purchasing entity. Examples of tie-breaking methods include:
- (1) priority ranking of bids based on best value factors employed for the purchase;
 - (2) drawing of lots;
 - (3) joint or multiple contract awards; or
 - (4) any other method the purchasing entity determines will fairly resolve the matter.

§ 391.151. Negotiated procurement standards.

- (a) Types of negotiated procurements. A purchasing entity may purchase goods or services through competitive negotiation as authorized by this section or noncompetitive negotiation as authorized by § 391.161 of this chapter.
- (b) Competitive negotiation.
- (1) Solicitation requirements. A purchasing entity that elects to conduct a competitive negotiation must prepare a request for proposal or request for offer that:
 - (A) clearly and accurately describes the purchasing entity's requirements, objectives, and/or expectations;
 - (B) identifies the criteria and factors the purchasing entity will consider in determining best value;
 - (C) states the relative importance of the criteria and factors in the determination of best value;
 - (D) includes all information or documents required to enable a potential respondent to respond (whether attached to the invitation or

incorporated by reference) or refers a potential respondent to such information;

(E) ensures, to the greatest extent practicable, a level playing field for all prospective respondents; and

(F) does not unduly restrict competition for the award.

(2) Selection of competitive proposals/negotiation. A purchasing entity may acquire goods or services through competitive negotiation or competitive proposals if it determines:

(A) more than one potential vendor is capable of submitting an offer or proposal;

(B) discussions or negotiations with potential vendors regarding the specific terms of a proposal or proposed contract will enable the purchasing entity to obtain best value;

(C) competitive bidding or other purchasing methods are inappropriate or inadequate to meet the purchasing entity's needs;

(D) the best interests of the state will be served by considering an award to other than the lowest priced or highest rated technical offer; or

(E) after conducting a competitive process, only one responsive proposal was received.

(3) Competitive field determinations.

(A) A purchasing entity may determine which offers or proposals are within the field of competition for admission to discussions or negotiations.

(B) The field of competition consists of the offers or proposals that receive the highest or most satisfactory ratings from the purchasing entity, based on the published evaluation criteria and procedures that govern the procurement.

(C) A purchasing entity may, in the interest of administrative efficiency, place reasonable limits on the number of offers or proposals that will be admitted to the field of competition, provided the purchasing entity discloses the factors that will influence this decision in the solicitation or other published source.

(4) Discussions.

(A) A purchasing entity may, but is not required to, conduct discussions with all, some, or none of the respondents admitted to the field of competition for the purpose of obtaining the best value for the purchasing entity.

- (B) Discussions may be conducted for the purpose of:
 - (i) Obtaining clarification of ambiguities in a proposal;
 - (ii) Requesting modifications to a proposal; or
 - (iii) Obtaining a best and final offer.
- (C) A purchasing entity may make an award prior to the completion of discussions with all respondents admitted to the field of competition, if:
 - (i) notice of this possibility was provided to all potential respondents prior to the commencement of negotiations; and
 - (ii) the purchasing entity has reasonably determined that the award represents the best value.
- (D) A purchasing entity may, but is not required to, permit respondents admitted to the field of competition to prepare best and final offers.
- (E) In conducting discussion, a purchasing entity or its representatives must not, through conduct or communications:
 - (i) favor one prospective contractor over another;
 - (ii) disclose a respondent's business, technical, or cost proposal, without that respondent's permission unless disclosure is required by law;
 - (iii) disclose the identities of individuals providing reference information about a respondent's past performance unless disclosure is required by law; or
 - (iv) furnish selection or evaluation information in a manner inconsistent with agency rules or policies unless disclosure is otherwise required by law.

§ 391.161. Noncompetitive negotiation standards.

Noncompetitive negotiation may be employed when a purchasing entity:

- (1) conducts a transaction under a noncompetitive purchasing method;
- (2) receives only one qualified response to a solicitation issued under a competitive purchasing method; or
- (3) authorizes an award on a sole source basis.

§ 391.165. Streamlined purchasing standards.

(a) General policy.

(1) A purchasing entity may implement streamlined purchasing procedures for purchases within the limits prescribed by this section if, in the entity's determination, streamlined procedures:

(A) Promote efficiency and economy in the entity's purchasing practices;

(B) Reduce administrative costs;

(C) Enable the entity to promote participation of small businesses or historically underutilized businesses; or

(D) Reduce administrative burdens on the agency and potential vendors or suppliers.

(2) A purchasing entity is encouraged to use streamlined purchasing procedures to the maximum extent practicable for all purchases that do not exceed the value specified by the entity under subsection (b) of this section. A purchasing entity is not required to use a streamlined purchasing procedure if the entity's needs can be met:

(A) Through a preferred supplier; or

(B) Through an existing contract.

(3) A purchasing entity may not divide purchases into smaller transactions in order to take advantage of a streamlined purchasing procedure or to avoid formal procurement procedures or any requirement associated with a formal procurement.

(b) Classification of procurements. A procurement may be classified as either a "formal" or "informal" procurement based on the estimated dollar value of the purchase. Each purchasing entity must define by rule or policy or procedure the threshold for formal purchases.

(c) Formal procurements.

(1) A purchasing entity must conduct a procurement as a formal procurement if the estimated value of the procurement:

(A) Equals or exceeds the value required for posting of the solicitation on the State Electronic Business Daily; or

(B) Equals or exceeds a lesser amount as established by the purchasing entity by rule or policy.

(2) A formal procurement must be conducted:

- (A) In accordance with §§ 391.141 or 391.151 of this chapter unless the procurement is subject to an exception from competitive purchasing requirements under § 391.109 of this chapter; or
 - (B) In accordance with cooperative purchasing requirements under subchapter E of this chapter.
- (3) In conducting a formal purchase, a purchasing entity must:
 - (A) Use a written or electronic solicitation, including any written or electronic method authorized under § 391.411 of this chapter;
 - (B) Ensure the solicitation remains open for a reasonable period of time that, in the determination of the purchasing entity, will allow qualified suppliers and vendors to prepare and submit adequate and responsive offers; and
 - (C) Ensure the widest reasonable solicitation of offers, e.g., through electronic posting.
- (d) Informal procurements.
 - (1) A purchasing entity may use any method of solicitation authorized under § 391.401 of this chapter.
 - (2) Except in the case of an emergency as described in § 391.109(3) of this chapter, any informal solicitation must remain open for a period that the purchasing entity determines is sufficient to allow qualified suppliers and vendors to reasonably prepare and submit offers.
 - (3) Solicitations must provide a fair and equal opportunity for all suppliers and vendors, based on specifications, terms and conditions.
 - (4) Solicitations and awards must be documented as provided in § 391.176 of this chapter.

§ 391.171. Multiple award, task/order delivery and blanket contract standards.

- (a) Multiple award purchases.
 - (1) Definition and general requirements.
 - (A) A multiple award purchase is a procurement of goods or services under a single solicitation from more than one vendor or supplier, each of which is awarded a contract from the purchasing entity for the same products or services.
 - (B) A purchasing entity may implement a multiple award purchase through indefinite quantity or indefinite delivery contracts.

- (C) A purchasing entity must make an award under a multiple award procurement on the basis of best value in accordance with §§ 391.55, 391.121 and 391.131 of this chapter.
- (2) Selection of multiple award purchasing.
- (A) A purchasing entity may elect to purchase goods or services under multiple awards when, in the purchasing entity's determination, the best value may be obtained through multiple awards.
 - (B) Multiple awards may be based on geographic distribution or availability of suppliers, competitive factors, or other factors relating to customer or client needs.
 - (C) Multiple awards are not required when the purchasing entity determines that:
 - (i) Only one contractor is capable of providing the goods or services in the quantity or at the level of quality required;
 - (ii) The goods or services are unique, proprietary, or highly specialized;
 - (iii) More favorable contract terms may be obtained if a single award is made;
 - (iv) The cost of administering multiple contracts may outweigh any potential benefits from making multiple awards;
 - (v) Tasks likely to be ordered are so integrally related that only a single contractor can reasonably perform the work;
 - (vi) The total estimated value of the contract is less than the threshold specified by the purchasing entity for streamlined purchasing under § 391.165;
 - (vii) Multiple awards are not in the best interests of the purchasing entity.
- (3) Multiple award purchases by purchasing cooperatives.
- (A) A cooperative purchasing arrangement formed in accordance with subchapter E of this chapter may issue multiple awards for the purchase of goods or services.
 - (B) A cooperative purchasing arrangement may allow multiple awards when the members of the cooperative purchasing arrangement determine that multiple awards are in the best interests of the members.
- (4) Issuance of orders under a multiple award contract.
- (A) In issuing orders for goods or services under a multiple award contract, a purchasing entity must provide notice of the potential order in accordance with either the multiple award contract or the rules of the purchasing entity.

Such notice must be sufficiently detailed to enable a supplier awarded a contract under a multiple award contract to have a fair opportunity to be considered for the order.

- (B) A purchasing entity may use any method approved by the entity or described in the contract to issue orders under a multiple award contract including, but not limited to, electronic transmission, telephone notification, facsimile, or other form of notification.

(5) Fairness in distribution of orders.

- (A) A purchasing entity must provide each supplier awarded a contract under a multiple award a fair opportunity to be considered for placement of an order exceeding \$2500 under the multiple award system.

- (B) To be eligible for consideration, a supplier awarded a contract must meet the specifications, terms and conditions established by the purchasing entity for the specific order.

- (C) The requirements of this paragraph do not apply if the purchasing entity determines:

- (i) The purchasing entity's needs are so urgent that providing fair opportunity to all awardees would result in unacceptable delays;

- (ii) Only one supplier is capable of providing the desired goods or services in the quantity or at the level of quality required;

- (iii) The desired goods or services are unique, proprietary, or highly specialized;

- (iv) The order is sufficiently similar to or logically follows another order previously issued to the same supplier that the interests of economy or efficiency are best served by issuance of the order on a sole-source basis; or

- (v) The order is required to satisfy a minimum guarantee under an indefinite quantity or indefinite delivery contract.

- (6) Contract terms and conditions must establish the manner in which individual transactions will be processed by the purchasing entity and the supplier or vendor.

- (b) Task/order delivery contracts. Purchasing entities may enter into contracts with suppliers or vendors to provide services based on any number of individual tasks or orders. Contract terms and conditions will apply to each task or order.

- (1) Each task or order must be individually justified and approved through normal purchasing entity processes.

- (2) Each task or order must be a stand-alone transaction without relation to any other purchase.

- (3) Each task or order must be executed with the contract supplier or vendor based on the following:
 - (A) The scope of work describing the extent of the service(s) to be provided;
 - (B) The schedule for the service(s) to be performed; and
 - (C) The budget for the service(s) to be performed.
 - (4) Progress payments may be made during the execution of the task or order provided the contract allows such payments and the task or order schedule extends beyond thirty (30) days.
 - (5) Best value criteria may be applied in accordance with the requirements of §§ 391.55, 391.121 and 391.131.
- (c) Blanket award purchases. Purchasing entities may enter into contracts with suppliers or vendors to provide products or services based on any number of orders. Contract terms and conditions will apply to each task or order. Contracts may be awarded on an exclusive or non-exclusive basis and/or on a mandatory or non-mandatory basis. Contracts must be awarded on the same basis as would normally be required for any single order for any commodity purchased through the contract. Blanket contracts may be issued for a single item or commodity or for any number of items or commodities offered by the same vendor or supplier.
- (1) Each order must be individually justified and approved through normal purchasing entity processes.
 - (2) Each order must be a stand-alone transaction without relation to any other purchase except the base blanket contract.
 - (3) Each order must be executed with the contract supplier or vendor based on the following:
 - (A) item specifications;
 - (B) item availability; and
 - (C) best value evaluation criteria.
 - (4) Best value criteria may be applied in accordance with the requirements of §§ 391.55, 391.121 and 391.131.
 - (5) Negotiations during the creation of a blanket contract may include the following:
 - (A) Unit cost or discounts;
 - (B) Delivery points; and
 - (C) Commercial terms and conditions.

(6) Negotiations on any individual order are limited to issues related to delivery.

§ 391.181. Multiple year awards.

(a) A purchasing entity may, when in the best interest of the state, enter into awards intended to extend beyond the initial year of the contract. Such awards must meet the following criteria:

(1) The initial procurement process must be reasonably calculated to:

(A) maximize competition among potential vendors and suppliers; or

(B) enroll any potential vendors or suppliers meeting established requirements, specifications and qualifications which must be clearly stated in the solicitation;

(2) The intent to extend the contract on satisfactory performance must be clearly stated in the solicitation;

(3) The evaluation criteria must address the intent to extend the contract on satisfactory performance and include some effort to consider performance over time; and

(4) The clear intent to extend notwithstanding, a formal performance evaluation must occur before the contract can be extended.

(b) Multiple year awards shall be subject to all other provisions of these rules that would otherwise apply to a one-time award, including but not limited to review and approval of best value criteria.

§ 391.183. Enrollment contracts.

(a) Enrollment of multiple vendors. A purchasing entity may purchase the same or similar goods or services or a list of goods or services that is included in a solicitation from multiple vendors if the purchasing entity determines the best interests of the state are served by enrolling multiple vendors.

(b) Enrollment agreements may be based on:

(1) customer base;

(2) geographic distribution; or

(3) other considerations that relate to customer or client needs.

(c) An enrollment process under this section must:

(1) be conducted in an open and fair manner that reasonably provides interested, qualified vendors equal opportunity to obtain a contract or do business with the purchasing entity; and

- (2) include contract terms and conditions or other policies adopted by the purchasing entity and provided to the vendor that establish the manner in which individual transactions will be processed.

Subchapter E. Cooperative purchasing methods.

§ 391.201. General purpose.

- (a) This subchapter implements the following provisions of state law:
 - (1) Section 2155.144, paragraphs (h) and (i), Government Code, which instruct the commission to adopt rules that allow health and human services agencies to make purchases through a group purchasing program and encourage agencies to use efficient purchasing methods such as a group purchasing program; and
 - (2) Section 32.044, paragraph (d), Human Resources Code, which authorizes the commission to assist the Texas Department of Health to adopt rules that allow public or private disproportionate share hospitals to make purchases through a group purchasing program under certain circumstances.
- (b) A purchasing entity may purchase goods or services, including consulting and professional services and goods or services defined as an "automated information system" under chapter 2157, Government Code, through cooperative purchasing methods prescribed in this subchapter except when a better value is available through another procurement method.
- (c) A purchasing entity may participate in, conduct, administer, or sponsor a cooperative purchasing arrangement authorized by this subchapter.

§ 391.203. Goals of cooperative purchasing.

The cooperative purchasing methods authorized by this subchapter are intended to accomplish the following goals:

- (1) Facilitate prompt, efficient, and economical purchases of goods and services by purchasing entities;
- (2) Enable purchasing entities to utilize the contracts of other purchasing entities; and
- (3) Minimize costs and risk of loss for vendors and suppliers who provide goods or services under a cooperative purchasing arrangement.

§ 391.205. Types of cooperative purchasing arrangements.

Two or more purchasing entities may form a cooperative purchasing arrangement for the purchase of goods or services under one of the following forms:

- (1) Purchasing consortium. A single purchasing entity may assume the role of lead purchasing entity for a purchasing consortium, conduct a procurement, execute a single contract on behalf of all members of the consortium, and maintain the

contractual relationship with the vendor or supplier. Members of the purchasing consortium may obtain goods or services from the vendor or supplier through the lead purchasing entity;

- (2) Enterprise pricing system. A single purchasing entity may execute a contract with a vendor or supplier that, through the use of pricing extension clauses or similar contractual language, agrees to provide the contracted goods or services to all members of the enterprise pricing system at the contracted price. Each member of the enterprise pricing system is directly responsible for ordering, receiving, inspection, approval, and payment for contracted goods or services in its own behalf;
- (3) Term contracts administered by the General Services Commission. Upon approval of the General Services Commission, a purchasing entity that is a state agency may obtain goods or services available from term contract vendors or suppliers procured by the General Services Commission.

§ 391.211. Relationship of purchasing entities under a cooperative purchasing arrangement.

Unless specifically provided for in the agreement between the purchasing entities, a purchasing entity that sponsors a cooperative purchasing arrangement does not become the agent of other participating purchasing entities for purposes of the cooperative purchasing arrangement.

§ 391.215. Responsibility of lead purchasing entity.

- (a) General duties. The lead purchasing entity for a cooperative purchasing arrangement is responsible for ensuring compliance with applicable procedures specified in this chapter for the purchase of goods or services and for compliance with the special procedures applicable to a cooperative purchasing arrangement prescribed by this subchapter.
- (b) Pre-solicitation responsibilities. Prior to issuing a solicitation instrument for the goods or services that are the subject of the cooperative purchasing arrangement, the lead purchasing entity must, to the extent practicable, consult with members of the cooperative purchasing arrangement regarding the following:
 - (1) Terms and conditions of the solicitation instrument;
 - (2) In the case of a purchasing consortium, the estimated quantities or a range of quantities to be purchased on behalf of the members of the consortium;
 - (3) In the case of an enterprise pricing system, the estimated quantities that each member of the system proposes to purchase during the life of the contract or a period specified by the lead purchasing entity; and
 - (4) Terms and conditions of the written agreement between the members of the cooperative purchasing arrangement.
- (c) Solicitation responsibilities.

- (1) The lead purchasing entity must publish appropriate and adequate information that notifies a prospective vendor or supplier of the availability of cooperative purchasing from the resulting contract or award in terms substantially similar to the following: "Notice of cooperative purchasing. The (name of agency) is the lead purchasing entity in a cooperative purchasing arrangement conducted in cooperation with the following purchasing entities: (list members of cooperative purchasing arrangement). This is a/an (specify type of cooperative purchasing arrangement—i.e., purchasing consortium or enterprise pricing system) established in accordance with Title 1, chapter 391, Texas Administrative Code. The contractor, subcontractor, vendor, or supplier awarded a contract for the goods and/or services solicited under this cooperative purchasing arrangement will be contractually obligated to provide the solicited goods and/or services to all members of the cooperative purchasing arrangement in accordance with the terms and conditions of the purchase and in the quantities and at the price negotiated with the lead purchasing entity.";
- (2) In the case of a purchasing consortium, the solicitation must disclose the estimated quantities or a range of quantities of goods and/or services to be ordered from the purchasing consortium during the term of the contract;
- (3) In the case of an enterprise pricing system, the solicitation must disclose the estimated quantities of goods and/or services to be ordered from the enterprise pricing system during the term of the contract.
- (d) Post-solicitation responsibilities. The lead purchasing entity will be responsible for all tasks associated with the evaluation of responses to a solicitation for a cooperative purchasing arrangement, award and management of a contract with the successful applicant(s), and the management of change orders and modifications to the contract. These responsibilities may be shared or fulfilled with the assistance of members of the cooperative purchasing arrangement as provided in subsections (d) and (e) of this section.
- (e) Assistance. The lead purchasing entity may request and utilize assistance from members of the cooperative purchasing arrangement in fulfilling the duties referenced in this section.
- (f) Alternation of lead entity duties. The duties of the lead purchasing entity may be alternated among the members of the cooperative purchasing arrangement. The members of the cooperative purchasing arrangement may institute a schedule for alternating lead entity duties. Such schedule must be incorporated into a contract for goods or services purchased under the cooperative purchasing arrangement. The alternation of lead purchasing entity responsibilities will not invalidate a contract or purchase order for goods or services that is in effect at the time such duties are alternated.

§ 391.217. Responsibilities of participating purchasing entities.

A purchasing entity that wishes to participate in, sponsor, conduct, or purchase under a cooperative purchasing arrangement must:

- (1) Ensure that the purchasing entity has sufficient legal authority to participate in and is not otherwise legally prohibited from participating in the cooperative purchasing arrangement;
- (2) Obtain official action by the governing body or chief executive officer that authorizes participation in the cooperative purchasing arrangement;
- (3) File a copy of such authorization with purchasing entity that originated the specific cooperative purchase or cooperative purchasing arrangement;
- (4) Execute a written agreement with the lead purchasing entity or members of the cooperative purchasing arrangement that complies with § 391.231 of this chapter;
- (5) Ensure that the proposed use of goods or services purchased through a cooperative purchasing arrangement is for a proper public or corporate purpose of the entity;
- (6) Issue a properly executed purchase order or instrument for goods or services under the cooperative purchasing arrangement;
- (7) Inspect and receive goods or approve and accept services or deliverables; and
- (8) Pay for good or services ordered under the cooperative purchasing arrangement.

§ 391.221. Admission to an existing cooperative purchasing arrangement.

- (a) Written application. A purchasing entity that wishes to purchase goods or services under an existing cooperative purchasing arrangement must apply in writing for admission to the cooperative purchasing arrangement with the lead purchasing entity. The application must include the information, approvals, or certifications specified in § 391.217 of this chapter.
- (b) Review of application. The lead purchasing entity will review the application and determine whether the exact or estimated needs of the applying entity can be accommodated in the cooperative purchasing arrangement. The lead purchasing entity must promptly notify the applying entity of its determination.

§ 391.223. Withdrawal from a cooperative purchasing arrangement.

A purchasing entity may withdraw from a cooperative purchasing arrangement upon the filing of written notice to the lead purchasing entity. The lead purchasing entity will notify the members of the cooperative purchasing arrangement of the withdrawal and will initiate resolution of any outstanding issues regarding the withdrawal.

§ 391.231. Written agreement required.

- (a) Except as provided in subsection (b) of this section, a group of purchasing entities that form a cooperative purchasing arrangement under these rules must execute a written agreement that:

- (1) Identifies the legal authority, including this chapter, that enables each purchasing entity to participate in the cooperative purchasing arrangement;
 - (2) Identifies the lead or originating purchasing entity for the cooperative purchasing arrangement;
 - (3) Describes the goods and/or services to be obtained under the cooperative purchasing arrangement;
 - (4) Specifies the method by which such goods and/or services are to be purchased;
 - (5) Specifies the rights, roles and responsibilities of the members of the cooperative purchasing arrangement;
 - (6) Specifies the duration of the cooperative purchasing arrangement;
 - (7) Specifies the payment responsibility of the purchasing entity for goods and/or services ordered under the cooperative purchasing arrangement; and
 - (8) Specifies whether and in what amount administrative costs, including indirect and overhead costs, associated with the management of the cooperative purchasing arrangement are to be shared or reimbursed.
- (b) Health and human services agencies may satisfy the requirements of subsection (a) of this section by executing a memorandum of understanding that governs all cooperative purchasing arrangements for the agencies that execute the memorandum. The memorandum must supply the information specified in subsection (a) of this section.

Subchapter J. Protest procedures.

§ 391.301. Availability of protest procedures.

- (a) A purchasing entity must, within the limits of the entity's legal authority and resources, provide an applicant an opportunity to request a formal or informal review of a tentative purchase award under the following circumstances:
- (1) The purchase award was made under a competitive procurement method and the protestant was not selected for the award; or
 - (2) The purchase or award was a sole source or emergency procurement.
- (b) The protest must be limited to matters relating to the protestant's qualifications, the suitability of the goods or services offered by the protestant, or alleged irregularities in the procurement process.
- (c) A protest may be resolved through formal or informal means, as determined by the purchasing entity. A purchasing entity that is a state agency is not required to conduct a protest as a contested case under the Administrative Procedure Act, chapter 2001, Government Code.

- (d) A purchasing entity may not award a contract for a purchase that is the subject of a protest filed in accordance with this section until the agency provides a written disposition of the protest to the protestant. This requirement may be waived in the case of a bona fide emergency or in the case of an award that is required by state or federal law to be completed by a particular date.
- (e) Resolution of a protest from an applicant for a grant shall be settled in accordance with the purchasing entity's rules or policies.

Subchapter M. Miscellaneous requirements.

§ 391.401. Methods of solicitation.

A health and human services agency may solicit offers, bids, or proposals for procurements conducted in accordance with rules and procedures adopted under this chapter by any of the following methods:

- (1) Direct mail notification delivered to prospective vendors or suppliers;
- (2) Telephone solicitation of prospective vendors, suppliers, contractors, or ;
- (3) Telegraph solicitation of prospective vendors, suppliers, contractors, or ;
- (4) Facsimile transmission delivered to prospective vendors, suppliers, contractors, or ;
- (5) On-line electronic transmission conducted by the agency;
- (6) Posting on the Electronic Business Daily or equivalent electronic commerce network;
- (7) Posting in the Texas Register; or
- (8) Publications of general or special circulation, including, but not limited to, newspapers and trade journals.

§ 391.411. Types of solicitation instruments.

A purchasing entity may solicit the purchase of goods or services using any of the following solicitation instruments:

- (1) Invitation for Bid—a written or electronic notification that requests a sealed bid from an interested prospective vendor or supplier that is responsive to the terms and conditions of the solicitation;
- (2) Request for Proposal—a solicitation that contains the terms, conditions, specifications and evaluation criteria of a proposed purchase of goods or services and requests a cost, technical, and/or business proposal from an interested prospective vendor or supplier;

- (3) Request for Offer—a solicitation that contains the terms, conditions, specifications and evaluation criteria of a proposed purchase of goods or services and which requests a written or electronic offer from an interested prospective vendor or supplier that is responsive to the solicitation;
- (4) Request for Quote—a written or electronic solicitation that requests the submission of an oral, written, or electronic price quote for the solicited goods or services; or
- (5) Notice of provider enrollment—a written or electronic instrument issued by a purchasing entity to develop a pool of service providers who have met the service standards and provider qualifications published by the purchasing entity.

§ 391.451. Standards of conduct for procurement personnel.

A purchasing entity that is a state agency must adopt standards of conduct for all personnel involved in the purchasing process that is at least as restrictive as standards of conduct applicable to state officers and employees under applicable state and federal law. A purchasing entity that is not a state agency may adopt standards that are at least as restrictive as standards of conduct applicable to officers and employees of the entity, as established by rule, ordinance, order, resolution, or policy of the governing body of the entity.

§ 391.453. Standards of conduct for contracted vendors and suppliers.

A purchasing entity will ensure prospective vendors and suppliers are informed of the ethical standards applicable to procurement personnel and may require vendors or suppliers to implement standards of conduct for their own personnel on terms at least as restrictive as those applicable to the purchasing entity's procurement personnel. A purchasing entity may examine a prospective vendor's or supplier's standards of conduct in the evaluation of a bid, offer, proposal, quote, or other applicable expression of interest in a proposed purchase of goods or services.

§ 391.551. Maintenance of lists prohibited.

- (a) A purchasing entity that is a state agency may not maintain a bidders list developed exclusively by the purchasing entity.
- (b) A purchasing entity that is a state agency must use, to the greatest extent possible, the centralized master bidders list maintained by the General Services Commission.

§ 391.552. Supplementation of centralized master bidders list.

A purchasing entity that is a state agency may supplement the centralized master bidders list maintained by the General Services Commission with its own list of historically underutilized businesses, as that term is defined by Chapter 2161, Government Code, if the purchasing entity concludes such supplementation will increase the number of historically underutilized businesses that submit responses to solicitation instruments issued by the purchasing entity.

Subchapter S. Recordkeeping and audit requirements.

§ 391.701. Duty of health and human services agencies.

A health and human services agency must maintain documentation that chronicles the development and award of a purchase conducted in accordance with this chapter.

§ 391.711. Definition of "procurement record."

The "procurement record" consists of the written or recorded documentation of the conduct and management of a procurement, including evidence of the decisions made by a health and human services agency regarding the method, selection, and justification of a procurement.

§ 391.713. Purpose of procurement record.

The procurement record serves as the primary source of information regarding a procurement for purposes of audit, review by appropriate state and/or federal authorities, public inquiry, and, where applicable, approval by the commission.

§ 391.715. Contents of procurement record on procurements over \$25,000.

The procurement record for all purchases over \$25,000 must include the following items:

- (1) A concise description of the goods or services that are the subject of the procurement;
- (2) The amount of funds committed or obligated under the procurement and, if required by the agency, identification of the source of funds;
- (3) A statement of need that summarizes the agency's determination of the necessity of the goods or services that are the subject of the procurement;
- (4) For a procurement from a preferred supplier, any correspondence that evidences the solicitation and commitment of the preferred supplier or that supports the agency's selection of a preferred supplier, if more than one such supplier was available;
- (5) Evidence of the agency's efforts to ensure adequate competition, including, but not limited to:
 - (A) Proof of notification of preferred suppliers, where applicable;
 - (B) Evidence of any required or optional publication or notice of the procurement opportunity, including publication in the Electronic Business Daily or Texas Register; and
 - (C) A list of the vendors or suppliers notified by the agency regarding the procurement and the source utilized by the agency to identify such vendors or suppliers or proof of posting on the State Electronic Business Daily;

- (6) Justification which supports the agency's decision to utilize a noncompetitive procurement method, if applicable;
- (7) A copy of the solicitation instrument (e.g., invitation for bids, invitation to negotiate, request for offers, request for proposals) and any modifications or revisions to the solicitation instrument;
- (8) Copies of the written or electronic quote, bid, offer, or proposal submitted by applicants in response to the solicitation;
- (9) Copies of evaluation documentation (such as bid forms, bid tabulations, cost analyses, life cycle cost analyses, etc.);
- (10) A copy of the best value justification developed by the agency that supports the award;
- (11) A copy of the purchase order, requisition, or voucher for the procurement, if applicable;
- (12) A copy of the contract executed by the agency and successful applicant, if applicable;
- (13) Copies of optional or required applicant certifications, statements, or verifications (such as Historically Underutilized Business certifications, federal lobbying or debarment certifications, non-collusion affidavits, etc.);
- (14) Copies of required or optional approvals (such as approvals by the agency's governing body or chief administrative officer, commission approvals of qualified procurements, etc.); and
- (15) Copies of written protests, if any, and the agency's written disposition of the protest or protests.

§ 391.716. Contents of procurement record for procurements of \$25,000 or less.

Each agency covered by this chapter shall determine the contents of the procurement record for procurements of \$25,000 or less by agency rule or policy.

§ 391.751. Audit of purchases by state auditor.

- (a) The state auditor may audit the acquisition of goods or services by a health and human services agency conducted in accordance with the requirements of this chapter. An audit may be conducted before or after a warrant is issued to pay for the acquisition of goods or services.
- (b) A health and human services agency must require, as a condition of contract, the cooperation of any vendor, supplier, or contractor in the conduct of an audit by the state auditor.

§ 391.752. Audit of purchases by health and human services agencies.

- (a) A health and human services agency may conduct audits of purchases made under the authority granted by this chapter in accordance with procedures and requirements established by the agency.
- (b) A health and human services agency may maintain a record of purchasing audits in the manner or format prescribed by the agency unless another format is prescribed by these rules.